IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-989

DAVID LEON RUYLE, et al,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONERS' REPLY

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I.

The government response asserts, at page 4:

> "The District Court was justified in concluding that . . . Ruyle knew that the secobarbital he distributed to Katzen would be diverted from legitimate channels.

First, the trial judge made no such finding.[1] Secondly, there was no evidence that Ruyle ever sold to anyone other than a registered distributor. Finally, giving full credit to Katzen's testimony, he told Ruyle that he was selling the drugs to doctors, albeit doctors who would not have to keep records. [transcript, page 12][2]

II.

At page 5, the government asserts:

> Ruyle's knowledge of the illegality of the sales was demonstrated by his desire to keep the sales to Katzen secret, his belief that Katzen's customers would not keep records of the transactions, and his use of falsely labeled containers.

There was simply no evidence that Ruyle desired to keep his sales secret. Ruyle's records, which were audited by the BNDD, reflected four sales to Katzen. The government evidence that there were any more sales is based solely on the uncertain testimony of Katzen:

> It is hard for me to estimate [the number of purchases from Mr. Ruyle between June, 1971, and April 14, 1972]. I would say somewhere between,

[1] The trial judge simply concluded:

> The Court believes from the testimony, and so finds, that this transaction was an illegal one and in violation of Title 21, 841(a)(1) . . . [Appendix B-1].

[2] Ruyle was not prosecuted on the theory that he was aiding and abetting anyone else in the illegal distribution of drugs. Even if he had been, his alleged knowledge that the doctors weren't keeping records would be colorless on the question of guilt since the lack of records could equally be attributed to a desire by the doctors to evade income taxes. Cf. *Ingram* v *United States*, 360 US 672, 678-679.

> probably around ten different occasions, approximately. [transcript, page 18].

The thirty bottles containing the secobarbital which were the subject of the indictment were properly labeled. As to the other sales, even Katzen acknowledged that "the majority of them had the original labels on them." He scratched off the company name and serial numbers after Ruyle sold to him. [transcript, pages 18-19].

III.

The government attempts to downgrade our first question into a naked sufficiency-of-the-evidence argument. The issue we tender is much more fundamental as our Petition clearly discloses—whether the statute gave Ruyle adequate notice that his conduct would be branded as criminal and whether the indictment notified him of the illegal conduct with which he was charged.

IV.

The record is clear that the BNDD agents had an *inspection* warrant which they served upon Ruyle when he was arrested. Before he executed the consent, the agents falsely represented that the warrant authorized seizure of his records, his controlled substances, and his typewriter. [trial transcript, pages 117, 144]. It was this misrepresentation as much as the arrest which destroyed the validity of the consent.

Respectfully submitted

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